



New South Wales

Environmental Planning and Assessment Amendment (Housing) Regulation 2021

under the

Environmental Planning and Assessment Act 1979

[*The following enacting formula will be included if this Regulation is made—*]

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Environmental Planning and Assessment Act 1979*.

Minister for Planning and Public Spaces

Explanatory note

The object of this Regulation is to amend the *Environmental Planning and Assessment Regulation 2000* as follows—

- (a) to prescribe conditions of a development consent involving boarding houses, co-living housing and seniors housing,
- (b) to require the name of the registered community housing provider who will be managing a boarding house to be included in the development application concerned,
- (c) to require a copy of the plan of management for a boarding house or co-living housing to be included in the development application concerned,
- (d) to enable a monetary contribution for affordable housing to be paid by electronic transfer into an account nominated by the relevant consent authority,
- (e) to make amendments consequential on the commencement of *State Environmental Planning Policy (Housing) 2021*.

Environmental Planning and Assessment Amendment (Housing) Regulation 2021

under the

Environmental Planning and Assessment Act 1979

1 Name of Regulation

This Regulation is the *Environmental Planning and Assessment Amendment (Housing) Regulation 2021*.

2 Commencement

This Regulation—

- (a) commences on the day on which *State Environmental Planning Policy (Housing) 2021*, Chapter 3, Part 3 commences, and
- (b) is required to be published on the NSW legislation website.

Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

[1] Clause 3 Definitions

Omit the definition of *site compatibility certificate*, paragraph (c) from clause 3(1).

[2] Clause 3(1), definition of “site compatibility certificate (affordable rental housing)”

Omit “clause 37(5) of *State Environmental Planning Policy (Affordable Rental Housing) 2009*”.

Insert instead “*State Environmental Planning Policy (Housing) 2021*, clause 37”.

[3] Clause 3(1), definition of “site compatibility certificate (seniors housing)”

Omit the definition.

[4] Clause 25L

Insert after clause 25K—

25L Electronic transfer of affordable housing contribution

If a condition is imposed on a development consent under the Act, section 7.32 requiring the payment of a monetary contribution to be used for the purpose of providing affordable housing, the monetary contribution may be paid by electronic transfer into an account nominated by the relevant consent authority.

[5] Clause 98F Conditions relating to development involving use of buildings as build-to-rent housing

Omit “Part 2, Division 6A of *State Environmental Planning Policy (Affordable Rental Housing) 2009*” from clause 98F(1).

Insert instead “*State Environmental Planning Policy (Housing) 2021*, Chapter 3, Part 4”.

[6] Clause 98F(3), definition of “tenanted component”

Omit “clause 41A of *State Environmental Planning Policy (Affordable Rental Housing) 2009*”.

Insert instead “*State Environmental Planning Policy (Housing) 2021*, clause 69”.

[7] Clauses 98G–98I

Insert after clause 98F—

98G Conditions relating to certain boarding houses—the Act, s 4.17(11)

- (1) For the purposes of the Act, section 4.17(11), the requirements set out in this clause are prescribed as conditions of development consent for development permitted under *State Environmental Planning Policy (Housing) 2021*, Chapter 2, Part 2, Division 2.
- (2) Before the issue of an occupation certificate for the development—
 - (a) a restriction must be registered, in accordance with the *Conveyancing Act 1919*, section 88E, against the title of the property relating to the development, which will ensure the requirements of subclause (3)(a) and (b) are met, and
 - (b) notice of the development must be given to the Registrar of Community Housing, including—

public consultation draft

Environmental Planning and Assessment Amendment (Housing) Regulation 2021 [NSW]
Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

- (i) the address of the boarding house, and
 - (ii) the name of the registered community housing provider who will be managing the boarding house, and
 - (c) evidence of the giving of the notice and registration of the restriction must be provided to the consent authority.
- (3) From the day on which an occupation certificate is issued for the development—
 - (a) the boarding house must be used for affordable housing, and
 - (b) the boarding house must be managed by a registered community housing provider in accordance with a plan of management, and
 - (c) notice of a change in the registered community housing provider who manages the boarding house must be given to the Registrar of Community Housing and the consent authority no later than 3 months after the change, and
 - (d) notice of a change to the plan of management must be given to the consent authority no later than 3 months after the change, and
 - (e) the registered community housing provider who manages the boarding house must—
 - (i) apply the Affordable Housing Guidelines, and
 - (ii) demonstrate, to the satisfaction of the Registrar of Community Housing, that the boarding house is being used for the purposes of affordable housing.

- (4) In this clause—

Affordable Housing Guidelines means the document titled “*NSW Affordable Housing Ministerial Guidelines*” published by the Department of Communities and Justice in August 2020, as approved by the Minister for Families and Communities from time to time.

registered community housing provider has the same meaning as in the *Community Housing Providers (Adoption of National Law) Act 2012*, section 13.

Registrar of Community Housing means the Registrar of Community Housing appointed under the *Community Housing Providers (Adoption of National Law) Act 2012*, section 10.

98H Conditions relating to co-living housing—the Act, s 4.17(11)

- (1) For the purposes of the Act, section 4.17(11), the requirements set out in this clause are prescribed as conditions of development consent for development permitted under *State Environmental Planning Policy (Housing) 2021*, Chapter 3, Part 3.
- (2) From the day on which an occupation certificate is issued for the development—
 - (a) the co-living housing must be managed by a managing agent—
 - (i) in accordance with a plan of management, and
 - (ii) who is contactable 24 hours a day, and
 - (b) notice of a change to the plan of management must be given to the consent authority no later than 3 months after the change, and
 - (c) private rooms and communal living areas in the co-living housing must contain appropriate furniture and fittings, maintained in a reasonable state of repair, for the use of residents.

98I Conditions relating to seniors housing—the Act, s 4.17(11)

- (1) For the purposes of the Act, section 4.17(11), the requirements set out in this clause are prescribed as conditions of development consent for development permitted under *State Environmental Planning Policy (Housing) 2021*, Chapter 3, Part 5.
- (2) Before the issue of the occupation certificate for the development, a restriction will be registered, in accordance with the *Conveyancing Act 1919*, section 88E, against the title of the property relating to the development, which will ensure that the requirement of subclause (3) is met.
- (3) From the day on which an occupation certificate is issued for the development, only the following kinds of people may occupy the accommodation to which the development relates—
 - (a) seniors or people who have a disability,
 - (b) people who live in the same household with seniors or people who have a disability,
 - (c) staff employed to assist in the administration and provision of services to the accommodation.

[8] Clause 130AB Requirement to advise of applications for certain complying development certificates

Omit clause 130AB(1)(c). Insert instead—

- (c) development specified in *State Environmental Planning Policy (Housing) 2021*, Chapter 3, Parts 1 or 2.

[9] Clause 190A Complying development certificates and construction certificates for installation of fire sprinkler systems in residential care facilities for seniors

Omit “for seniors” from clause 190A(1).

[10] Clause 190A(2)

Omit the subclause. Insert instead—

- (2) In this clause—
residential care facility has the same meaning as in the Standard Instrument.

[11] Clause 262A Fee for site compatibility certificate

Omit clause 262A(3).

[12] Schedule 1 Forms

Insert after clause 1(1)(g)—

- (h) for a development application for development permitted under *State Environmental Planning Policy (Housing) 2021*, Chapter 2, Part 2, Division 2—the name of the registered community housing provider who will be managing the boarding house,
- (i) for a development application for development for the purposes of a boarding house or co-living housing—a copy of the plan of management.

[13] Schedule 1, clause 2(1)(p)

Omit “Part 2, Division 1 of the ARH SEPP”.

public consultation draft

Environmental Planning and Assessment Amendment (Housing) Regulation 2021 [NSW]
Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

Insert instead “*State Environmental Planning Policy (Housing) 2021*, Chapter 2, Part 2, Division 1”.

[14] Schedule 1, clause 2(1)(q)

Omit “clause 50(1) of the ARH SEPP”.

Insert instead “*State Environmental Planning Policy (Housing) 2021*, clause 45(1)”.

[15] Schedule 1, clause 2(1)(q)

Omit “Part 3 of the ARH SEPP”.

Insert instead “*State Environmental Planning Policy (Housing) 2021*, Chapter 2, Part 3”.

[16] Schedule 1, clause 2(1A)

Omit the definitions of *ARH SEPP* and *low-rental dwellings*. Insert instead—

boarding house has the same meaning as in the Standard Instrument.

co-living housing has the same meaning as in the Standard Instrument.

low-rental dwellings has the same meaning as in *State Environmental Planning Policy (Housing) 2021*, Chapter 2, Part 3.

[17] Schedule 4 Planning certificates

Omit clause 15. Insert instead—

15 Conditions for seniors housing

If *State Environmental Planning Policy (Housing) 2021*, Chapter 3, Part 5 applies to the land, a statement setting out terms of a kind referred to in the Policy, clause 85(2) that have been imposed as a condition of development consent granted after 11 October 2007 in relation to the land.

[18] Schedule 4, clause 17(2)

Omit the subclause. Insert instead—

- (2) If *State Environmental Planning Policy (Housing) 2021*, Chapter 2, Part 2, Division 1 or 5 applies to the land, a statement setting out terms of a kind referred to in the Policy, clause 19(1) or 38(1) that have been imposed as a condition of development consent in relation to the land.